

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
SERGIO LOPEZ,) CASE NO. 04-66216 JPK
) Chapter 13
Debtor.)

ORDER ON DEBTOR'S OBJECTION TO CLAIM #13

On December 30, 2005, the debtor, by counsel, filed an objection to claim #13 to REO Properties Corporation, Ocwen Loan Servicing, LLC. The record establishes that proper notice of the objection was provided to the creditor, and that no request for hearing or response to the objection was filed of record.

The debtor's motion seeks to allow a claim filed by the debtor on behalf of the creditor, in lieu of the claim filed by the creditor itself. The record establishes that the debtor filed a claim on behalf of the creditor on August 3, 2005, apparently pursuant to the provisions of Fed.R.Bankr.P. 3004, as claim #12. The claim to which the debtor objects was filed by the creditor itself on December 22, 2005. Fed.R.Bankr.P. 3004 provides that a debtor may file a claim on behalf of a creditor if the creditor fails to file a proof of claim on or before the first date set for the meeting of creditors; however, that Rule further provides that the debtor's claim on behalf of the creditor must be filed within 30 days after the expiration of the claim filing deadline, which in this case was May 2, 2005. As a result, both the debtor's claim filed on behalf of the creditor and the creditor's claim are untimely.

This case presents what is becoming an increasingly annoying scenario to this Court. Mortgage lenders, or their successor-successor-successor/assignee-assignee-assignee, file proofs of claim which, because of the apparent manner in which the mortgage markets are now managed, result in often unintelligible computations of arrearages and debt balances when the proofs of claim are compared against records in the debtor's possession. In a good faith effort

to seek to resolve the actual arrearage amount to be provided for by a Chapter 13 plan under 11 U.S.C. § 1322(b)(5) and/or to determine the accurate amount of a current mortgage payment to be provided for under a plan, debtors have no recourse but to file objections to proofs of claim which do not correlate to the debtor's records and which do not on their face provide an intelligible explanation of the manner of computation of an arrearage and/or a current mortgage payment. This is a particularly acute problem in the Hammond Division of the United States Bankruptcy Court for the Northern District of Indiana, due to the total chaos that has been caused by reassessment of properties in Lake and Porter Counties, failure of the local taxing authorities to timely provide billing notices for real property tax payments, and the adjustments made by local authorities and the Indiana Legislature to property tax laws and procedures. The MOST FRUSTRATING part of this drill to the Court is the fact that debtors are unable in many instances to communicate with a single entity which has all of the information necessary to determine the actual amount of an arrearage owed by the debtors on their mortgage debt and/or the manner in which a current mortgage payment asserted in a proof of claim has been computed. As a result, debtors file objections to proofs of claim filed by creditors who in those claims assert that they have a secured claim in real property comprising the debtor's bankruptcy estate. Debtor's counsel serve the objection and required notice of objection upon the creditor at the address stated in the proof of claim. Despite that fact, the creditor who has filed a claim hardly ever responds to the objection. Because the debt to which the objection relates is in most instances excepted from discharge by the provisions of 11 U.S.C. § 1328(c)(1), it is absolutely necessary that the debtors, the Court, and the Chapter 13 Trustee have an accurate determination of the amount of indebtedness provided for by the Chapter 13 plan so that if a debtor completes the plan, the creditor's records as to the remaining obligation at the time of discharge match those provided for by the plan and the Court's determination of the creditor's claim.

What is becoming increasingly clear to the Court is that the secondary/tertiary/however far you want to go market for resale/assignment/ whatever of residential mortgage obligations has a significantly impaired ability to cooperate with the debtors and courts to determine the actual indebtedness owed by the debtors. What is also becoming increasingly apparent to the Court is that the secondary/tertiary/however far you want to go purchasers of these obligations don't care about any order issued by a court, or any request issued by a debtor, to legitimately determine the amount of the indebtedness required to be provided for by a Chapter 13 plan. And yet, this is an industry which lobbied for and obtained an absolutely abominable revision of the Bankruptcy Code because it asserted that debtors were totally taking advantage of the industry in bankruptcy cases.

The Court finds the circumstances of this case and so many others like it to be absolutely intolerable. If a creditor files a proof of claim in this Court, the Court expects that creditor to respond to objections that are necessary to determine the amount of indebtedness owed to that creditor especially in the context of the residential mortgage industry.

The problem in this case is that the debtor's proof of claim was late-filed under the provisions of Fed.R.Bankr.P. 3004, and the creditor's claim was equally late-filed under the provisions of Fed.R.Bankr.P. 3002. Thus, the creditor who has asserted a claim against the debtor in this case has no claim of any nature. That won't help the debtor, because the debt is ultimately excepted from discharge under 11 U.S.C. § 1328(c)(1). The Court cannot allow the debtor's objection on the terms upon which it has been proposed because the debtor did not timely file a claim on behalf of the creditor; however, to simply deny the creditor's claim will present a plethora of problems for the debtor in the event that the plan is completed and the debtor then seeks to reconcile the debt on the creditor's records with the debt as established by proceedings in the Chapter 13 case.

Enough is enough.

IT IS ORDERED that a hearing will be held on **March 30, 2006, at 9:30 A.M.** with respect to the debtor's objection to claim #13 of REO Properties Corporation, Ocwen Loan Servicing, LLC.

IT IS FURTHER ORDERED that the Chief Executive Officer of REO Properties Corporation, Ocwen Loan Servicing, LLC, or his/her designee, shall appear at the hearing, and produce with him/her all records in the possession of that entity which relate to the indebtedness asserted by claim #13. In the event that a representative of the claimant does not appear, with the necessary records in hand, the Court will issue an order to show cause which may then result in the Court's utilization of the services of the United States Marshal to bring the Chief Executive Officer of the claimant before the Court to answer to his/her failure to appear before the Court as required by this order.

Dated at Hammond, Indiana on February 28, 2006.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:

Debtor, Attorney for Debtor

Trustee, US Trustee

REO Properties Corporation, Ocwen Loan Servicing, LLC, 12650, Ingenuity Drive, Orlando, FL
32826